

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C.) No. 1113/2007**

% **Date of Decision: 22nd July, 2009**

DHARAMVIR SINGH PETITIONER
! Through: Mr. Sajjan K. Singh, Advocate.

VERSUS

\$ N.D.M.C. RESPONDENT
^ Through: Ms. Jyoti Singh with Mr. Ankur Chibber,
Advocates.

CORAM:
Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **YES**
2. To be referred to the reporter or not? **YES**
3. Whether the judgment should be reported in the Digest? **YES**

S.N.AGGARWAL, J (ORAL)

This writ petition filed by the workman (petitioner herein) is directed against an award dated 03.10.2006 passed by Mr. O.P. Saini, Presiding Officer, Labour Court-VII, Delhi, confirming his termination from the service of the respondent w.e.f. 01.02.1991.

2. Briefly stated the facts of the case relevant for the disposal of this writ petition are that the petitioner was appointed as a Muster Roll daily wagher Beldar by the New Delhi Municipal Council (respondent herein) on 20.09.1989. His services were dispensed with by the respondent w.e.f 01.02.1991. He, after more than 9 years of dispensing with his services, raised an industrial dispute in 2000 which was referred by the appropriate Government for adjudication to the Labour Court.
3. The Court below relying on various judgments of the Hon'ble

Supreme Court and the evidence that was adduced by the parties before it reached to a conclusion that the termination of the petitioner from the service of the respondent was justified and was in accordance with the terms and conditions of his appointment. The Court below in its impugned award has also recorded a finding of fact that the petitioner was not able to prove before it that he had completed 240 days service with the respondent in a year preceding immediately before the date of his termination. On this finding of fact arrived at by the Court below, it was held that the petitioner was not entitled to any relief as his termination does not amount to retrenchment under the provisions of Section 2(oo) and Section 25 F of the Industrial Disputes Act, 1947.

4. Mr. Sajan K. Singh, learned counsel appearing on behalf of the petitioner has referred and relied upon an office order dated 31.10.1990 (Exhibit WW-1/M-1 at page 68 of the Paper Book) to contend that even as per respondent itself, the petitioner had worked for more than 240 days and according to the learned counsel, the finding of the Court below that the petitioner had not completed 240 days of service in a year preceding the date of his termination suffers from perversity as it is contrary to the contents of the above-referred office order. This document has been taken into consideration by the Court below and I do not find any reason to take a different view than what has been taken by the Labour Court on this document. It may be noted that this Court vide its order dated 06.05.2009 had directed the respondent to state on affidavit whether the office order dated 31.10.1990 was passed by the concerned Department of the N.D.M.C. or not. Pursuant to

order dated 06.05.2009, the respondent has filed an affidavit of its Chief Engineer, Mr. Ramesh Raina, who in para 1 of his affidavit has stated that the letter dated 31.10.1990 is not available in any of the records of the N.D.M.C. though the entire records have been looked into. This explanation regarding authenticity of office order dated 31.10.1990 does not appear to be convincing and from the said explanation, it cannot be said whether the office order dated 31.10.1990 was passed or not. I proceed to decide this case on the assumption as if the office order dated 31.10.1990 was passed by the respondent and that the petitioner was allowed to work with the respondent in terms of the said order. It will be significant to mention that Mr. Ramesh Raina, Chief Engineer (C)-I, N.D.M.C. who has filed this affidavit pursuant to the Court order dated 06.05.2009 in para 3 of his affidavit has given the break up of period for which the petitioner had worked with N.D.M.C. from 20.09.1989 to 01.02.1991 and a perusal of the same would show that the petitioner had worked for 89 days in the year 1989, for 186 days in the year 1990 and for 28 days in the year 1991. The services of the petitioner were dispensed with by the respondent w.e.f. 01.02.1991 and, therefore, in terms of the provisions contained in Section 25 F of the Industrial Disputes Act, 1947, the year relevant for determining whether the workman had completed 240 days service in a year is the year of 1990 which is the year preceding the date of his termination. In the year 1990, the petitioner had worked for 186 days and, therefore, the requirement of 240 days as provided

in Section 25 F is not met. The petitioner was, therefore, not entitled to take any advantage out of office order dated 31.10.1990 referred above.

5. There are two other important aspects of this case which cannot be lost sight of. One is the aspect of delay in making a reference and the second is the legal right of the petitioner to ask for his reinstatement even assuming that he had completed 240 days of service with the respondent in the year preceding the date of his termination.

6. Adverting to the first question regarding delay, it is an admitted case of the petitioner himself that he was appointed on Muster Roll as daily wager Beldar by the respondent w.e.f. 20.09.1989 and that his services were dispensed with w.e.f. 01.02.1991. It is not disputed by him that he had asked for a reference of dispute regarding his alleged illegal termination after more than 9 years of his termination and that was in the year 2000. There is an admitted delay of more than 9 years on the part of the petitioner in raising an industrial dispute regarding his alleged illegal termination.

7. In ***Ajaib Singh Vs SCMPS Society Ltd. reported in (1999) 2 LLN 674 (SC)***, the workman had raised a dispute against his termination after a lapse of 7 years. The Supreme Court in this case held that as no plea was taken by the management before the Labour Court, the workman could not show the circumstances preventing him from approaching the Court at an earlier stage and,

had that plea been taken, the workman would have been able to show the circumstances or even to satisfy the Court that such plea was not sustainable after the reference was made by the Government.

8. In the present case, the respondent had taken an objection of delay of more than 9 years on the part of the petitioner in raising an industrial dispute in its written statement filed before the Labour Court and despite this objection being taken by the respondent, the petitioner failed to give any explanation for delay in raising the industrial dispute and, therefore, he cannot be permitted to take advantage of the judgment of the Hon'ble Supreme Court in Ajaib Singh's case (supra) where the delay of 7 years in making a reference was not considered unreasonable.

9. In ***Management of Indian Iron & Steel Company Ltd. Vs. Prahlad Singh (2000) 2 LLJ 1653 (SC)***, the Supreme Court observed that the Tribunal was right in not granting any relief to the workman as he preferred the claim almost after a period of 13 years without any reasonable or justifiable ground.

10. In ***Balbir Singh Vs. Punjab Roadways (2001) 2 LLN 118, 119 (SC)***, where counsel for petitioner strongly relied on Ajaib Singh (Supra) in favour of condoning the delay and granting relief to the workman, the Supreme Court, rejecting the said contention, observed:

"We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle, as contended by the

learned counsel for the petitioner, had been laid down in that decision. The decision was rendered in the facts and circumstances of the case, particularly, the fact that the plea of delay was not taken by the management in the proceeding before the tribunal. In the case on hand, the plea of delay was raised and was accepted by the tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the tribunal depending upon the facts and circumstances of the case. No doubt the discretion is to be exercised judicially. The High Court, on consideration of the matter, held that there was no ground to interfere with the discretion exercised by the tribunal. We are not satisfied that the award of the tribunal declining relief to the petitioner, which was confirmed by the High Court, suffered from any serious illegality which warrants interference by this Court. Accordingly, the special leave petition is dismissed."

11. A perusal of the above judgments of the Hon'ble Supreme Court would show that there is no hard and fast rule regarding the time for making the order of reference. As to whether a claim has become stale or not, will depend upon the facts & circumstances of each case. Since in the present case the petitioner was appointed as a daily wager on Muster Roll of N.D.M.C. and had intermittently worked for a short period and because he had not given any reasonable or satisfactory explanation for delay of more than 9 years in raising the industrial dispute, I do not find any infirmity in the impugned award rejecting the claim of the petitioner.

12. The next question that needs an answer by the Court is whether the petitioner who was appointed as a daily wager and had worked for a very short period intermittently from 20.09.1989 to 01.02.1991 is entitled for reinstatement or not even assuming that

before his impugned termination he had worked for more than 240 days in the year preceding the date of his termination. This question came for consideration before the Hon'ble Supreme Court in ***Himanshu Kumar Vidyarthi and Others Vs. State of Bihar and others (1997) 4 SCC 391***, wherein it was held by the Supreme Court that every department of the Government cannot be treated to be an industry and that the daily wagers appointed in such departments have no legal right to ask for their regularisation or reinstatement. The relevant portion of this judgment of the Supreme Court in Himanshu Kumar Vidyarthi's case (supra) is extracted below:

“Every department of the Government cannot be treated to be industry. When the appointments are regulated by the statutory rules, the concept of industry to that extent stands excluded. The petitioners were not appointed to the posts in accordance with the rules but were engaged on the basis of need of the work. They are temporary employees working on daily wages. Their disengagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act. The concept of retrenchment therefore cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily-wage employees and have no right to the posts, their disengagement is not arbitrary.”

13. A similar view was taken by the Division Bench of this Court in an order dated 18.09.2007 passed in WP(C) No. 6898/2002. A copy of the said order of the Division Bench has been made available to the Court by Mr. Ankur Chibber, learned counsel appearing on behalf of the respondent, and the same has been perused by the Court. The Division Bench of this Court in its order dated

18.09.2007 relying upon the judgment of the Hon'ble Supreme Court in ***Executive Engineer, SP Engg. Div. & Anr. Vs. Digambara Rao & Ors. (2004) 8 SCC 262; A. Umarani Vs. Registrar Cooperative Societies (2004) 7 SCC 112 and Pankaj Gupta Vs. State of J&K (2004) 8 SCC 353*** held that merely because casual workers had worked for 240 days in one calender year, they would not be entitled for regularisation on point of temporary status.

14. In view of the above judgments of the Hon'ble Supreme Court and of Division Bench of this Court, I have no hesitation in holding that the petitioner being a daily wager has no legal right to ask for his regularisation or reinstatement even if he had completed more than 240 days of service with the respondent in the year preceding the date of his termination.

15. For the foregoing reasons, I do not find any infirmity or illegality in the impugned award that may call for an interference by this Court in exercise of its extraordinary discretionary writ jurisdiction under Article 226 of the Constitution. This writ petition, therefore, fails and is hereby dismissed.

JULY 22, 2009
'bsr'

S.N.AGGARWAL, J